

**IN THE HIGH COURT FOR THE STATES OF PUNJAB AND
HARYANA AT CHANDIGARH**

C.W.P No.10153 of 1999

Date of Decision: 05.08.2009

State of Punjab and another

.....Petitioners

Versus

The workman through President, CITU Union and another

....Respondents

Present: Ms. Monika Chhibbar Sharma, DAG, Punjab
for the petitioners.

Mr. K.S. Kapoor, Advocate
for respondent No.1.

CORAM:HON'BLE MR. JUSTICE K. KANNAN

1. Whether Reporters of local papers may be allowed to see the judgment ? **Yes**
2. To be referred to the Reporters or not ? **Yes**
3. Whether the judgment should be reported in the Digest? **Yes**

-:-

K. KANNAN J. (ORAL)

1. The award in challenge is a direction given by the Industrial Tribunal, Chandigarh that the Greasers in R.S.D. Project would be entitled to the scale of Rs.950-1800/- w.e.f. 01.01.1995 with initial start of Rs.1,000/- per month in that scale and that arrears of pay in that scale shall become payable only from 01.09.1995.

2. Learned counsel for the State Ms. Monika Chhibbar contends that the Government Circular issued on 04.04.1989 (Ex.M-1) which sets down revision of scales of pay for work-charged employees of the Department of Irrigation & Power, obtained to Greasers a revision from Rs.300-430/- to Rs.750-1350/- and if the workmen had any grievance against this fixation, the remedy would be

only to apply to the Pay Commission for appropriate reliefs and the Industrial Tribunal shall not have a power to re-write the scales of pay for the benefit of the workman.

3. If the award had been merely on the plea of the Union espousing the cause of the workmen that they shall be paid higher scale than what was being paid to unskilled workers with no other basis, then perhaps the reasoning of the Labour Court could be suspect and would require an intervention. However, in this case, the award takes note of the stand of the Department itself at various times assessing the quality of work and the category to which the workmen belonged. It was brought out on record before the Labour Court that in the Monthly Construction Force Report issued by the Engineer (Personnel Division), he had referred to the representations from various classes of persons and the need for categorization into four groups namely supervisory workman, skilled workman, semi-skilled workman and unskilled workman. It can be noticed that Greasers have been classified as semi-skilled workmen and under the unskilled workmen, there are Beldars, Boatmen, Cartmen, Chowkidar, Cleaners and Dak Runner. The further communications retain this categorization at all times and the Greaser has been shown to be a semi-skilled person while the unskilled persons were Beldars and others referred to above.

4. The claim of the workman was while the unskilled workers had been put on scale of Rs.750-1350, the persons such as the Greasers whose work was technical in some sense could not be put on the same scale. The Industrial Tribunal had the benefit of the

evidence adduced before it and after assessing the quality of work done and how it was different from unskilled labour had passed the award fixing the scale of pay as Rs.950-1850/- and the arrears. The Hon'ble Supreme Court in *Rohtash Industries Ltd. Vs. Brijander Pandey AIR 1959 208; AIR 1997 SC 1* has stated that an Industrial Tribunal exercising powers under Section 7A shall have even the power to substitute contracts and write new contracts for the benefit of the parties. Quoting Ludwing Teller that "industrial arbitration may involve the extension of an existing agreement, or the making of a new one, or in general the creating of new obligations or modifications of old ones, while commercial arbitrations generally concerns itself with interpretations of existing obligations and dispute relating existing agreements, the Hon'ble Supreme Court further held, "a Court of law proceeds on the footing that no power exists in the Courts to make contracts for people; and the parties make their own contracts. The Courts reach their limit of power when they enforce contracts which the parties have made. An Industrial Tribunal is not so fettered and may create new obligations or modify contract in the interests of industrial peace, to protect legitimate Trade Union activities and to prevent unfair practices of victimisation."

5. Learned counsel appearing for the workmen refers me to the provisions under Section 7-A of the Industrial Disputes Act which empowers the Industrial Tribunal to adjudicate on any matter specified in Schedule II or Schedule III. Schedule III includes among other items, "the classification by grades" in Entry 7 as falling within the jurisdiction of Industrial Tribunal. To him, when a definite

reference had been made for determination of appropriate scales, the Industrial Tribunal cannot shirk its responsibility and cow down to an argument that it shall not fall within its jurisdiction to decide on the appropriate scales for workmen. I accept the contention of learned counsel appearing for the workman that the power exercised by the Industrial Tribunal fell within its jurisdiction and there is no legal vice attached to the award to be susceptible for intervention through writ.

6. Even without reference to the case as discussed, it is submitted by learned counsel appearing for the workman that the Government has also given effect to the scales as fixed by the Industrial Tribunal and they have availed all such benefits. Having regard to the subsequent development also, it shall be inequitable to reverse the decision and seek the workmen to pay back what benefit they have already obtained. Even on a pure issue of exigency, it shall not be possible to reverse the award passed by the Industrial Tribunal.

7. The writ petition is, therefore, dismissed and the award of the Labour Court is confirmed. No costs.

(K. KANNAN)
JUDGE

August 05, 2009
Pankaj*